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Date:

February 25, 2014

### Legend

Settlor =

A =

Date =

Trust =

Taxpayer =

Trust Agreement =

Dear :

This letter responds to the ruling request dated September 11, 2013, and subsequent correspondence, submitted by your authorized representative requesting a generation-skipping transfer tax (GST) ruling regarding the proposed exercise of a power of appointment over assets in Trust.

The facts submitted are as follows:

### Trust

On Date, Settlor executed Trust Agreement. Date is a date prior to September 25, 1985. Trust Agreement established four irrevocable trusts, including Trust.

Article III, Section 1(a) of Trust Agreement provides that Taxpayer is the primary life beneficiary of Trust. Article III, Sections 1(b), (c) and (d) each name one of Taxpayer's siblings as a respective primary life beneficiary of one of three remaining trusts created by Trust Agreement. This ruling pertains only to Trust and does not

pertain to the three other trusts created by Trust Agreement for the benefit of Taxpayer's siblings.

Article V, Section 5(b) of Trust Agreement provides, in part, that each beneficiary may receive from time to time during the life of his or her trust such portions of the net income accruing from time to time to the trust and such portions of the corpus of the trust as the trustee may see fit to pay over and deliver to such beneficiary.

Article III, Section 1(e) provides that upon the death of the primary life beneficiary, the remainder interest beneficiary or beneficiaries of that trust shall be such person or persons who are the primary life beneficiary's lineal descendants, brothers or sisters, nephews, nieces, or cousins (but never the primary life beneficiary, his estate, his creditors, or the creditors of his estate) to the extent or in the amounts or proportions, and in the lawful interests or estates, that the primary life beneficiary by his last will and testament (Will) appoints. The primary life beneficiary may at any time during his life release the power of appointment with respect to any or all of the property subject to the power, and may further limit the persons in whose favor the power may be exercised. If the power of appointment is not validly exercised by the primary life beneficiary, then upon his death, any corpus and income of the trust that has not been validly appointed by the primary life beneficiary shall be held for the equal use and benefit of (1) the lineal descendants of the primary life beneficiary, then living, *per stirpes*; or (2) if none, then in equal shares to the brothers and sisters of the primary life beneficiary, or their descendants, then living, *per stirpes*.

Article III, Section 1(e) also provides that the term "primary life beneficiary" applies not only to the beneficiaries named in Article III, Sections 1(a), (b), (c) and (d), but to all their successors to beneficial interests under the respective trust estates during their respective terms.

Article IV, Section 1 provides that the term of each trust established under Trust Agreement shall be for the period of the life of the last to die of the primary life beneficiaries named in Article III, Sections 1(a), (b), (c), and (d) above, plus an additional period of twenty-one (21) years. (The primary life beneficiaries named in Article III, Sections 1(a), (b), (c), and (d) above were all lives in being when Trust was created.)

Article V, Section 4 provides that at the end of the period of time when the trusts established by Trust Agreement terminate, the trustee will proceed to wind up the affairs of each trust and distribute and deliver unconditionally all the then corpus and undistributed income to the then beneficiary or beneficiaries; provided, however, if such corpus and undistributed income of a trust, or portion thereof, has vested in a person under twenty-one (21) years of age, the trustee in his discretion, may retain the possession and management of such minor's share until such minor has attained the

age of twenty-one (21) years, or until his or her disabilities or minority have been legally removed.

It is represented that no additions, actual or constructive, have been made to Trust after September 25, 1985.

#### Proposed Codicil to Taxpayer's Will and Successor Trusts

Taxpayer proposes to execute a codicil to his Will (Proposed Codicil) to exercise his testamentary special power to appoint Trust assets. The Proposed Codicil substitutes a new Subsection 4.2B for the existing Subsection 4.2B of Taxpayer's Will.

Subsection 4.2B, as set forth in the Proposed Codicil, designates Taxpayer's three children, in equal shares, and the descendants of any such child who is deceased at the time of Taxpayer's death, on a *per stirpes* basis, as the remainder interest beneficiaries (as that term is used in Trust Agreement) of a portion of Trust. Subsection 4.2B also provides that these shares of Trust are to be held in further trust in accordance with the terms and provisions of Trust Agreement with the modifications set out in the Proposed Codicil. The modifications relevant to this ruling provide as follows:

Section 4.2B.1 provides that the share of Trust created for each remainder interest beneficiary will be held in a successor trust for the benefit of such remainder interest beneficiary, who will then become the primary life beneficiary (as that term is used in Trust Agreement).

Section 4.2B.1 also provides that, subject to section 4.2B.2, in the event that a primary life beneficiary of a successor trust dies during the term of Trust and its successor trusts, the successor trust will be further divided, on a *per stirpes* basis, into separate trusts for the benefit of the descendants of the deceased primary life beneficiary, with each of the descendants becoming the primary life beneficiary of a new successor trust. If a primary life beneficiary dies without descendants, the assets of his successor trust will pass to a successor trust for the benefit of the primary life beneficiary's nearest ancestor.

Section 4.2B.2 provides that each primary life beneficiary of a successor trust will have the power of appointment described in Article III, Section 1(e) of Trust Agreement with respect to his successor trust. The primary life beneficiary may exercise the power in the manner set forth in Article III, Section 1(e) of Trust Agreement; provided that he may only exercise the power in favor of individuals who (i) are his lineal descendants, his siblings, his nieces, nephews or cousins and (ii) are descendants of Taxpayer. In no event may the primary life beneficiary exercise the power in favor of the primary life beneficiary, his estate, his creditors, or the creditors of his estate.

Section 4.2B.3 defines the term “successor trust” as a separate trust formed from the division of Trust upon Taxpayer’s death or from the further division of a successor trust as the result of the death of a primary life beneficiary (who is a descendant of Taxpayer) after Taxpayer’s death, as such division is described in subparagraph 4.2B.1.

Section 4.2B.4 defines the term “primary life beneficiary’s nearest ancestor” as the lowest-generation ancestor of the primary life beneficiary who (i) has at least one then-living descendant and (ii) is the Taxpayer or a descendant of the Taxpayer.

Section 4.2B.5 provides that Article IV, Section 1 of Trust Agreement will apply to the successor trusts by inserting the following provision after the word “above” and before the word “plus”: the descendants of Settlor who were alive on Date, and the descendants of A who were alive on Date.”

Section 4.2B.6 and .7 provide that Article V, Sections 4 and 5(b) of Trust Agreement will apply to the successor trusts by inserting the words “primary life” before the word “beneficiary” where it appears in those sections.

### REQUESTED RULING

Taxpayer has requested a ruling that the exercise of his testamentary special power to appoint Trust assets, pursuant to the terms of the Proposed Codicil, will not cause distributions from Trust or successor trusts to be subject to the generation skipping transfer tax.

### LAW AND ANALYSIS

Section 2041(a)(2) of the Internal Revenue Code provides that the value of the gross estate shall include the value of all property with respect to which the decedent has at the time of his death exercised a general power of appointment created after October 21, 1942.

Section 2041(b) defines the term “general power of appointment” as a power that is exercisable in favor of the decedent, the decedent’s estate, the decedent’s creditors, or the creditors of the decedent’s estate. A power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is not a general power of appointment.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent’s estate or the creditors of the holder’s estate, or (b) expressly not

exercisable in favor of the decedent or his creditors, or the decedent's estate, or the creditors of his estate.

Section 2601 imposes a tax on every generation-skipping transfer (GST). The term "generation-skipping transfer" is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

In the present case, Trust was irrevocable prior to September 25, 1985. It is represented that no additions, actual or constructive, have been made to Trust after September 25, 1985.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided under § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

In the present case, Taxpayer's power to appoint is not exercisable in favor of Taxpayer, Taxpayer's creditors, Taxpayer's estate, or the creditors of Taxpayer's estate. Accordingly, Taxpayer's power to appoint is not a general power of appointment.

Section 26.2601-1(b)(1)(v)(B) provides a special rule for certain limited powers of appointment. Under this section, the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if: (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1); and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For these purposes, the exercise of a power of appointment that validly postpones or

suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. The last sentence of § 26.2601-1(b)(1)(v)(B) provides that if a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Section 26.2601-1(b)(1)(v)(D), Example 4 illustrates this rule. In Example 4, on March 1, 1985, T established an irrevocable trust (Trust 1) as defined in § 26.2601-1(b)(1)(ii). Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. GC has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in § 26.2602-1(b)(ii)) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to T's great grandchild, GGC, for life. Upon GGC's death, the remainder is to be paid to GGC's issue. GGC was alive on March 1, 1985, when Trust 1 was created. C died on April 1, 1986. On July 1, 1987, GC exercised the power of appointment. The exercise of GC's power does not subject future transfers from Trust 2 to tax under chapter 13 because the exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was in being at the date of creation of Trust 1) plus 21 years. The result would be the same if Trust 2 had been created after the effective date of chapter 13.

In the present case, Taxpayer's power of appointment over the assets of Trust was created under Trust Agreement, an irrevocable trust not subject to chapter 13 under § 26.2601-1(b). Therefore, the first requirement of § 26.2601-1(b)(1)(v)(B) is satisfied.

The second requirement of § 26.2601-1(b)(1)(v)(B), is also satisfied in the present case. Under Section 4.2B.5 of the Proposed Codicil to Taxpayer's Will, by reference to Article IV, Section 1 of Trust, all successor trusts to Trust must terminate no later than 21 years after the death of a class of persons all of whom were lives in being at the date of the creation of Trust. These include Taxpayer and Taxpayer's siblings who are the initial primary life beneficiaries of the trusts created under Trust Agreement, as well as the other descendants of Settlor who were alive on Date, and the descendants of A who were alive on Date.

Thus, Taxpayer's proposed exercise of his power of appointment over the property in Trust will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the Trust property for a period, measured from Date, the

date Trust was created, extending beyond any life in being at the date of creation of Trust plus a period of 21 years.

Taxpayer's exercise of his power of appointment over the property in Trust will also create powers of appointment over the property in the successor trusts. Section 4.2B.2 grants each primary life beneficiary of a successor trust a testamentary power to appoint his successor trust estate in trust to his descendants, his siblings, and his nieces, nephews or cousins who are also Taxpayer's descendants. In no event, however, may the primary life beneficiary of a successor trust appoint his successor trust estate in favor of his estate, his creditors, or the creditors of his estate. In addition, successor trusts created under any primary life beneficiary's power of appointment will terminate under Section 4.2B.5 of the Proposed Codicil no later than 21 years after the death of a class of persons all of whom were lives in being at the date of the creation of Trust. These include Taxpayer and Taxpayer's siblings who are the initial primary life beneficiaries of the trusts created under Trust Agreement, as well as the other descendants of Settlor who were alive on Date, and the descendants of A who were alive on Date.

Thus, under the terms of the Proposed Codicil, any exercise of a power of appointment by the primary life beneficiary of a successor trust will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the Trust property for a period, measured from Date, the date Trust was created, extending beyond any life in being at the date of creation of Trust plus a period of 21 years.

Accordingly, based upon the facts submitted and representations made, we conclude that Taxpayer's exercise, pursuant to the Proposed Codicil, of his power to appoint the Trust assets will not be a constructive addition to either Trust or successor trusts to Trust and will not cause distributions from Trust or its successor trusts to be subject to the generation-skipping transfer tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file in our office, a copy of this letter has been sent to your authorized representative.

Sincerely,

Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for 6110 purposes